

# **Exhibit 38**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

LEHMAN BROTHERS HOLDINGS INC.,  
et al.,

Debtors.

Chapter 11

CASE NO.: 08-13555 (JMP)

(Jointly Administered)

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767 Fifth Avenue  
New York, New York  
June 25, 2013  
9:29 a.m.

VIDEOTAPED DEPOSITION of RICHARD  
KRASNOW, before Melissa Gilmore, a Notary  
Public of the State of New York.

ELLEN GRAUER COURT REPORTING CO. LLC  
126 East 56th Street, Fifth Floor  
New York, New York 10022  
212-750-6434  
REF: 104143

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2 MR. ISAKOFF: I don't believe that's  
3 true with respect to ten.

4 Q. I beg your pardon. My error.

5 Mr. Isakoff is correct. Let me see if I can --  
6 let me see if I can get this right.

7 Do you recall that you were  
8 designated by LBHI to testify with respect to  
9 topics one, two, four, five, six, seven, eight  
10 and nine?

11 A. Yes.

12 Q. And are you prepared to do that  
13 today?

14 A. Yes.

15 Q. Now, if I can ask you with respect  
16 to topic one, "The lease agreement dated  
17 March 16, 2005," et cetera.

18 Do you see that sir?

19 A. Yes, sir.

20 Q. Do you have any -- strike that.

21 Let me ask you first this question:  
22 In preparing for your deposition here today,  
23 did you review any or all of the drafts of that  
24 lease?

25 A. No.

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Q. You reviewed none of them?

**A. I did not review any drafts.**

Q. Did you review any communications from the negotiations?

**A. I don't recall that I reviewed any.**

Q. All right. Do you have any knowledge, firsthand or otherwise, with respect to any of the negotiations of the March 16, 2005 lease pertaining to 25 Bank Street?

**A. No.**

Q. Do you have any knowledge of any kind concerning the intent of any of the parties to that lease as of the time it was executed?

**A. No.**

Q. Now, with respect to item two, Schedule 4 to the lease, do you have any knowledge concerning the negotiations of what became Schedule 4 to the same lease?

**A. No.**

Q. Have you spoken to any of the negotiators from any one of the three parties to that lease about any of the negotiations that led up to the execution of the lease,

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2 including Schedule 4?

3 **A. No.**

4 Q. Do you have any knowledge, firsthand  
5 or otherwise, concerning the intent of the  
6 parties as of the time that Schedule 4 was  
7 agreed to?

8 **A. No.**

9 Q. Am I correct, Mr. Krasnow, that in  
10 preparing for your deposition today, you did  
11 review certain documents?

12 **A. Yes.**

13 Q. Can you tell me what the documents  
14 were?

15 **A. There were, what I would view as,**  
16 **significant number of pieces of paper that**  
17 **consisted of a lot of different types of**  
18 **documents, e-mails, memos, agreements, drafts.**  
19 **A variety, a panoply of documents.**

20 Q. And when did you review those  
21 documents?

22 **A. In connection with the preparation**  
23 **for this deposition?**

24 Q. Yes, sir.

25 **A. Yesterday and a month or so ago.**

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2 Q. All right. Did any of those  
3 documents refresh your recollection concerning  
4 any of the events in 2010 or 2011 pertaining to  
5 the lease or Canary Wharf's claim?

6 **A. Yes.**

7 Q. Which ones?

8 **A. I don't understand when you say**  
9 **which ones.**

10 Q. Which of the documents, as best as  
11 you recall it, refreshed your recollection?

12 **A. There were e-mails that related to**  
13 **the period in question, in question being**  
14 **settlement negotiations leading up to events in**  
15 **December of 2010 and slightly thereafter.**  
16 **There were drafts -- there were draft**  
17 **stipulations. There were lease documents and**  
18 **attendance schedules. I think that probably**  
19 **covers it.**

20 Q. Okay. Thank you.

21 Do you recall, Mr. Krasnow, in  
22 connection with your looking at documents for  
23 preparation for this deposition, whether it was  
24 yesterday or roughly a month ago, do you recall  
25 looking at any documents that predated

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2 March 16, 2005?

3 **A. No.**

4 Q. Do you have any information of any  
5 kind concerning the negotiations of the lease  
6 at 25 Bank Street that's referred to in  
7 paragraph one of Schedule A of Exhibit 59?

8 MR. ISAKOFF: Object to form.

9 **A. I'm sorry, could that question be**  
10 **read back?**

11 MR. TULCHIN: Could you read it  
12 please, Melissa?

13 (Record read.)

14 **A. It's my understanding that whatever**  
15 **documents, if any, that there are would have**  
16 **been provided, and I'm not -- I'm just not**  
17 **aware -- as I said, I don't recall seeing**  
18 **anything myself that relates to the**  
19 **pre-March 16, 2005 period.**

20 Q. Okay. Have you had any  
21 communications with anyone who you believe was  
22 involved in any way with the negotiations of  
23 that lease over the last two years?

24 **A. No.**

25 Q. And is the same true with respect to

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2 Schedule 4 to the lease?

3 **A. Yes, it is true.**

4 Q. All right. Now, in preparing for  
5 this deposition, Mr. Krasnow, did you have  
6 occasion to consult with Mr. Ehrmann?

7 **A. In connection with the preparation**  
8 **for this deposition?**

9 Q. Yes, sir.

10 **A. No.**

11 Q. Have you read the transcripts of any  
12 of the depositions that have been taken so far?

13 **A. No.**

14 Q. All right. Have you been told about  
15 the testimony of any of the deposition  
16 witnesses thus far?

17 MR. ISAKOFF: Now, I'm going to  
18 instruct you not to answer to the extent  
19 that whatever you have been told has been  
20 told to you by counsel.

21 If you have been told the content of  
22 the depositions by anybody other than  
23 counsel, then you should respond, but you  
24 should leave any discussions with counsel  
25 out.



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2 look at it?

3 **A. I did go to offices at Canary Wharf.**  
4 **I don't know whether or not the offices, which**  
5 **were Lehman offices that I visited, were these**  
6 **offices -- these being the premises covered by**  
7 **the lease at issue here.**

8 Q. Did you know in 2010 that 25 Bank  
9 Street had more than a million square feet of  
10 office space?

11 **A. I may have. I don't...**

12 Q. Were you aware that 25 Bank Street  
13 was built for Lehman originally?

14 MR. ISAKOFF: Object to form.

15 **A. I don't recall if I knew that then.**

16 Q. Were you aware that the 2005 lease  
17 provided that Lehman Brothers Limited would be  
18 a tenant as a convenience for the Lehman global  
19 entity?

20 MR. ISAKOFF: Object to form.

21 **A. No.**

22 Q. Do you know who on the Canary Wharf  
23 side was involved in the negotiations of the  
24 lease?

25 **A. No.**

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Q. And how about Schedule 4 of the lease?

**A. I don't know.**

Q. Were you aware that 25 Bank Street was one of the buildings that was put into a securitization of Canary Wharf properties?

MR. ISAKOFF: What is the time frame of when you are asking was he aware? What is the time frame? I'm lost now.

Q. Let me ask you about in 2010, were you aware of that?

MR. ISAKOFF: Thank you.

**A. I don't recall.**

Q. In 2010, as best you remember it, did you have readily available to you, in your office at Weil Gotshal, a copy of the lease?

MR. ISAKOFF: Object to form.

**A. I'm sorry, what year? 2010?**

Q. Yes, sir.

**A. We had a copy of the lease.**

Q. Did you, yourself, have one in your office on a computer or in hard copy?

**A. Yes.**

Q. Which? Or is it one or the other or

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2 Q. Did LBHI, in the fall of 2010, have  
3 any need at all for a million square feet or  
4 anything close to that of office space in  
5 London, England?

6 **A. I'm not in a position to answer the**  
7 **question.**

8 Q. You don't have any information that  
9 would bear on that question; is that right?

10 **A. That's correct.**

11 Q. Leaving aside Canary Wharf or the  
12 building located at 25 Bank Street, are you  
13 aware of any effort ever made by LBHI to enter  
14 into a lease for office space in London?

15 MR. ISAKOFF: And the time frame for  
16 this is?

17 MR. TULCHIN: September 15, 2008  
18 until today.

19 MR. ISAKOFF: Okay.

20 **A. Bear with me. I'm trying to think**  
21 **back to that period of time.**

22 **I don't know. There were employees**  
23 **of LBHI in London, but I have no knowledge.**

24 Q. Do you have any knowledge of any  
25 lease that LBHI has ever entered into for

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2 office space in London in the same period,  
3 September 15, '08 to today?

4 **A. No. No, I have no knowledge.**

5 MR. ISAKOFF: Make sure he has  
6 finished his question first.

7 THE WITNESS: Oh, I'm sorry. I  
8 thought he had.

9 Q. As of today, do you know whether or  
10 not LBHI rents any office space anywhere in  
11 England?

12 **A. No, I don't know.**

13 Q. Do you know whether LBHI rents any  
14 office space anywhere in the United Kingdom?

15 **A. No, I don't know.**

16 Q. How about in Europe?

17 **A. I don't know.**

18 Q. To the best of your knowledge, since  
19 September 15, 2008, has LBHI entered into any  
20 negotiations to rent any office space in the  
21 United Kingdom?

22 **A. I don't know.**

23 Q. In the fall of 2010, did you ever  
24 gain any understanding from any source that  
25 LBHI was interested in renting all or a portion

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2 of the office space at 25 Bank Street?

3 **A. I'm sorry. Could that question be**  
4 **repeated for me?**

5 MR. TULCHIN: Could you read it back  
6 please, Melissa?

7 (Record read.)

8 **A. I did not have any understanding.**

9 Q. I couldn't quite hear you.

10 **A. I didn't have any understanding.**

11 Q. Mr. Krasnow, at any time in the fall  
12 of 2010, did you tell Jennifer DeMarco of  
13 Clifford Chance, in writing or verbally, that  
14 LBHI might want or would want to rent space at  
15 25 Bank Street?

16 **A. I don't recall any such**  
17 **communication.**

18 Q. Did you ever tell anyone else at  
19 Clifford Chance?

20 **A. No.**

21 Q. Did you ever tell anyone at Sullivan  
22 & Cromwell that, same time period?

23 **A. No.**

24 Q. Did you ever tell any representative  
25 of Canary Wharf whether it be a lawyer, an

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2 employee, an officer, an owner, any  
3 representative of Canary Wharf in the fall of  
4 2010, that LBHI might want to take space at 25  
5 Bank Street?

6 **A. No.**

7 MR. TULCHIN: Could we please mark,  
8 as Krasnow Exhibit 69, a document, the  
9 first page of which is dated December 1,  
10 2010 -- oh -- yes, that's right. I'm  
11 sorry. Production numbers LBHI\_CW6467  
12 through 6472.

13 (Krasnow Exhibit 69, Document,  
14 Production Numbers LBHI\_CW6467 through  
15 6472, marked for identification.)

16 **A. (Perusing.)**

17 Q. Take as much time as you want to  
18 look at the document, Mr. Krasnow. I want to  
19 ask you first about an e-mail that appears on  
20 the fourth page. It's a page with production  
21 number 6470 from Jennifer DeMarco, November 30,  
22 2010, to you with a copy to Erika del Nido.

23 Do you see that, sir?

24 **A. Yes, I do.**

25 Q. Did you receive that e-mail on or

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**for itself.**

Q. Looking at it now, in 2013, is there anything in the words that are present that you would interpret or understand to be on the subject of whether or not LBHI wanted a new lease?

A. The only response to that is we did not believe that a condition of getting the documents we require should be a response to that question.

Q. Did you have a meeting with lawyers from Sullivan & Cromwell on or about December 6, 2010?

A. Yes.

Q. Did you take any notes at that meeting?

A. I don't believe I did.

Q. Do you recall who else was present at the meeting?

A. Besides myself?

Q. Yes, sir.

A. Mr. Dietderich was there from Sullivan & Cromwell. There may have been another attorney from Sullivan who attended.

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2 **There was somebody from Canary Wharf, or the**  
3 **parent of Canary Wharf, but someone who was**  
4 **there represented themselves as being there on**  
5 **behalf of Canary Wharf. I don't recall their**  
6 **name. And Erika del Nido.**

7 Q. To your knowledge, did Ms. del Nido  
8 take any notes of what was said at that  
9 meeting?

10 **A. I don't recall.**

11 Q. In preparing for your deposition  
12 here today, both your deposition as a 30(b)(6)  
13 witness and your personal deposition, did you  
14 come across any notes that were taken of the  
15 December 6 meeting?

16 **A. No, I don't recall seeing any.**

17 Q. Where was the meeting held?

18 **A. At our offices.**

19 Q. Was it on the 25th floor here at --

20 **A. Yes.**

21 Q. -- the General Motors Building?

22 MR. ISAKOFF: Wait until he is  
23 finished.

24 **A. Yes.**

25 Q. Sorry, you may have thought I was



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2 finished.

3 Do you remember how long the meeting  
4 took?

5 A. No.

6 Q. What's your best recollection of  
7 what was said to you at that meeting and what  
8 you said?

9 A. I believe I tried to understand why  
10 we were meeting with Sullivan & Cromwell, and  
11 I'm not sure whether that conversation occurred  
12 at that meeting or prior to that meeting  
13 perhaps with Mr. Dietderich. It's kind of both  
14 gelled somewhat in my mind.

15 The meeting clearly was in response  
16 to our request to find out what was going on  
17 with respect to JPM. I seem to remember  
18 Mr. Dietderich indicating that JPM was very  
19 concerned about there being any disclosure as  
20 to their actually being involved in a  
21 transaction, that it was them, notwithstanding  
22 the articles in the press.

23 I remember that there was a  
24 discussion about the need for a confidentiality  
25 agreement before we would be provided with a

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2 copy of the lease.

3 I certainly remember discussing with  
4 them the importance of our finding out about  
5 the transaction, and it's my recollection that  
6 Mr. Dietderich indicated a desire that they  
7 know whether or not we would take the lease in  
8 the context of JPM doing the transaction with  
9 Canary Wharf, and that somehow after that  
10 occurred we would have the ability and exercise  
11 that ability to then try to take the lease.

12 Something that didn't quite make a  
13 lot of sense to me, but that was the context,  
14 as I recall, that Mr. Dietderich explained why  
15 they wanted to know if we would be interested  
16 in the leasehold premises, assuming we had the  
17 ability to do that.

18 I don't recall exactly how the  
19 meeting ended, other than I guess there was  
20 discussion about the confidentiality agreement.

21 Q. Anything else you recall?

22 A. My reaction was that they were very  
23 anxious to proceed with the JPM transaction.  
24 There may have been some discussion, I don't  
25 recall specifically, with respect to our

1 **KRASNOW**

2 **understanding about what was happening with**  
3 **the -- with whatever agreement there was with**  
4 **the administrators of LBL.**

5 Q. When Mr. Dietderich asked you to  
6 tell him whether LBHI was interested in the  
7 premises, what, if anything, did you say in  
8 response?

9 **A. I don't recall my precise words.**

10 Q. Well, do you recall the substance of  
11 what you said?

12 **A. No.**

13 Q. During the same meeting, on  
14 December 6, here in your offices at Weil  
15 Gotshal, did Mr. Dietrich tell you what the  
16 economics of the contemplated transaction with  
17 JPMorgan were going to be?

18 **A. He, as I recall, did generally**  
19 **describe what he represented were certain of**  
20 **the economic terms. That's correct.**

21 Q. So he told you what JPMorgan was  
22 going to pay to get this 999-year lease; is  
23 that right?

24 **A. I believe he told us that aspect of**  
25 **the proposed transaction, yes.**

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2 Q. Okay. Later on or after  
3 December 20, 2010 --

4 **A. December 20?**

5 Q. Let me back up. I don't want to  
6 mislead you here.

7 I'm asking you now about the actual  
8 transaction, which was signed, I believe, on  
9 December 20, 2010. And my question is this:

10 At the point when you were able to  
11 examine the final lease that was executed, did  
12 the economics that appear in that document,  
13 line up with what Mr. Dietderich had said to  
14 you on December 6?

15 MR. ISAKOFF: Object to form.

16 **A. You mean when we were provided with**  
17 **a complete copy of the lease?**

18 Q. Whenever you first saw the economic  
19 terms in the final executed contract, did they  
20 line up with what Mr. Dietderich had explained  
21 about the economics during the meeting on  
22 December 6?

23 **A. When -- certain of the economic**  
24 **terms did.**

25 Q. Are you saying -- I'm sorry.

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2 A. There are certain material terms  
3 that did not. Those economic terms that  
4 Mr. Dietderich described were consistent with  
5 those provisions of the lease that refer to  
6 those economic terms.

7 Q. Okay. Were there other provisions  
8 that were undescribed that later on you thought  
9 were material?

10 A. Yes.

11 Q. What were they?

12 A. There was a provision in the lease  
13 that had not previously been disclosed, either  
14 by Mr. Dietderich when he was describing the  
15 lease, nor in -- I believe we got a draft of  
16 the lease before it was finalized and then  
17 thereafter, in response to my request after a  
18 closing, we got a redacted form of the final  
19 lease.

20 In neither of those versions was  
21 there the provision that was reflected in a  
22 fully disclosed -- I believe fully disclosed  
23 lease a long time later, which provision  
24 precluded Canary Wharf from putting the lease,  
25 if you will, giving a notice of a put, if I can

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2 **characterize it that way, to LBHI.**

3 Q. Anything else that you thought later  
4 had been omitted from what Mr. Dietderich  
5 described?

6 **A. That's what immediately comes to my**  
7 **mind.**

8 Q. Okay. Is there anything else that  
9 comes to mind, you know, quasi immediately as  
10 you are sitting here today? I just want to  
11 make sure that you're not saying there is  
12 something else, but it's not quite as immediate  
13 in your thinking.

14 **A. No. If I were to look at the lease,**  
15 **there might be something else, but that is the**  
16 **one provision that immediately comes to my**  
17 **mind.**

18 Q. Okay.

19 MR. TULCHIN: Melissa, could we  
20 mark, please, as Krasnow Exhibit 71, a  
21 document, the first date of which is  
22 December 6, 2010, production numbers  
23 LBHI\_CW10941 through 10944.

24 (Krasnow Exhibit 71, Document,  
25 Production Numbers LBHI\_CW10941 through

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2 **what that first sentence says.**

3 Q. Okay. Looking at the second  
4 sentence, Mr. Dietderich's e-mail says, "You  
5 objected to that on the basis that economics of  
6 lease might demonstrate a surprisingly high  
7 market value that LBHI could capture."

8 Is that accurate, that you said  
9 words to that effect in the meeting?

10 **A. I don't recall that I used those**  
11 **words.**

12 Q. Regardless of whether you used those  
13 exact words, did you communicate that  
14 sentiment?

15 **A. I don't know if I communicated that**  
16 **sentiment.**

17 Q. Did you say in the meeting that the  
18 economics of the JPMorgan lease might  
19 demonstrate a high market value and that you  
20 wanted to see what the value was?

21 **A. I'm going to phrase this in a maybe**  
22 **little bizarre way, but it's likely I did say**  
23 **something to that effect.**

24 Q. And then Mr. Dietderich's next  
25 sentence says, "We disclosed to you the market